

BIOLOGICAL SURVEYS AND ENDANGERED SPECIES LAWS

Obtaining landowner permission to survey is an integral part of biological inventory. Occasionally, however, permission to survey on private lands is not granted due to a belief that if a rare species is discovered, restrictions and land-use limitations will be imposed. Clearly, when this occurs the search for scientific information is hindered. A secondary effect of not granting permission to survey is that owners of biologically significant lands do not learn about the conservation options and tax incentives that are available to them. Those who grant permission and are found to own significant lands are given results from the biological survey and, if they wish, are put in contact with an appropriate conservation organization, or are made aware of other management or protection options.

In reality, there is very little reason for landowners to have concerns about the presence of rare species on their land. A summary of federal and state endangered species laws relevant to private landowners was recently prepared by Mark A. Cantrell of the U.S. Fish & Wildlife Service and Kenneth A. Bridle of the Piedmont Land Conservancy in Greensboro, NC. Some of that information is presented below to help dispel concerns that landowners may have about rare species and to provide clarification on potential land-use restrictions.

FEDERAL LAW

1. The Endangered Species Act (ESA) protects only plants and animals that are federally listed as Endangered or Threatened. Since federally listed species are by definition very rare, the likelihood of any occurring on a given tract of private land is very small.
2. The ESA protects federally listed animal species from the potentially harmful actions of private landowners. Because this may lead to restrictions on their use of lands, Congress, the U.S. Fish & Wildlife Service (USFWS), and other partners have worked to develop flexible tools for resolving conflicts. These tools include Section 10 permits, such as habitat conservation plans, safe harbor agreements, and candidate conservation agreements. Federal funds are also available to assist landowners with management and conservation of listed and candidate species (rare federally but not officially listed) on their land. Plants on private land are not subject to provisions of the ESA, unless federal funding or permitting is involved.
3. Engaging in interstate or foreign trade of a federally listed species without a permit is illegal for plants and animals. "Taking" (i.e., harassing, harming, pursuing, hunting, killing, trapping) or possessing illegally taken animals is a violation of the ESA. Removing, digging up, cutting, damaging, or destroying a federally listed plant is illegal on federal lands.
4. Through the habitat conservation planning process, the USFWS may issue a permit so that private landowners may lawfully "take" a federally listed animal species if it is "incidental to and not the purpose of carrying out otherwise lawful activities." These permits are available as long as the landowner implements an approved habitat conservation plan, and the "taking" does not jeopardize the continued existence of the species. A private landowner is not required to prepare